No. 76-1164

In the Supreme Court of the United States

OCTOBER TERM, 1976

JEFFREY PETER SNYDER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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CITATIONS

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OPINION BELOW

The judgment order of the court of appeals (Pet. App. 14-15) is noted in a table at 547 F. 2d 1165.

JURISDICTION

The judgment of the court of appeals was entered on January 24, 1977. The petition for a writ of certiorari was filed on February 22, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the trial court correctly instructed the jury concerning the proof required of petitioner's knowledge that he was dealing with federal officials.

2. Whether the evidence was sufficient to sustain petitioner's conviction under 18 U.S.C. 1501 of obstructing service of an arrest warrant.

3. Whether petitioner's conviction on three counts arising out of the same incident violates the Double Jeopardy Clause.

STATUTES INVOLVED

18 U.S.C. 111 provides in relevant part:

> Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both.

18 U.S.C. 1501 provides in relevant part:

> Whoever knowingly and willfully obstructs, resists, or opposes any officer of the United States, or other person duly authorized, in serving, or attempting to serve or execute, any legal or judicial writ or process of any court of the United States, or United States magistrate * * * [s]hall, except as otherwise provided by law, be fined not more than $300 or imprisoned not more than one year, or both.

26 U.S.C. 7212(a) provides in relevant part:

> Whoever corruptly or by force or threats of force (including any threatening letter or communication) endeavors to intimidate or impede any officer or employee of the United States acting in an official capacity under this title, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs

> or impedes, or endeavors to obstruct or impede, the due administration of this title, shall, upon conviction thereof, be fined * * * or imprisoned * * * . The term "threats of force", as used in this subsection, means threats of bodily harm to the officer or employee of the United States or to a member of his family.

STATEMENT

On April 22, 1976, Internal Revenue Service (IRS) agents Deborah Parks and Allen Rawls went to the residence of Keith Miller in order to serve him with a civil summons requiring him to appear to give testimony (Tr. 8-9). Petitioner answered the door, admitted the agents into the house, and left the room (Tr. 9-10). Miller soon appeared, and Agent Parks displayed her credentials to him, identified herself and Agent Rawls as IRS employees, and served the summons. While Agent Parks was explaining the summons, petitioner returned to the room, and Miller told him, "Clyde, they have a summons for me." At that point, petitioner grabbed the summons from Miller's hand and ordered the agents to "Get out of this God damned house * * * You people from the * * * Internal Revenue Service have no reason to be here" (Tr. 11). Petitioner then grabbed Agent Rawls' lapel and shoved the summons into his pocket. He put his hand on the back of Agent Parks' neck, applying pressure, and forcibly pushed her out of the door (Tr. 12, 45-46). Petitioner then took the summons, which Agent Rawls had in the meantime removed from his pocket and left on a table, crumpled it up, and threw it out the door after them, shouting "Don't you come back here again, you black fucker" (Tr. 46).

That afternoon, Charles R. Nagy, a criminal investigator with the Internal Revenue Service, obtained a warrant for petitioner's arrest for assaulting a federal officer (Tr. 62, 66). He and several other IRS inspectors (Tr. 67) proceeded to the Miller residence in official cars bearing government license plates and marked "U.S. Government Vehicle, Interagency Motor Pool" on the side. At about 7:00 p.m. petitioner approached the house in an automobile, but, seeing the agents standing outside, he sped off (Tr. 106-108). Two of the agents pursued him at a high speed and attempted unsuccessfully to stop him by placing their vehicle across petitioner's path (Tr. 110-111). The agents finally pulled alongside petitioner's car as he stopped at an intersection for a red light; one agent got out of his car, showed his credentials to petitioner, identified himself as a federal officer, and ordered petitioner to get out of his car (Tr. 113). When the light turned green, however, petitioner drove off (Tr. 114). He was apprehended later that night at the Miller residence (Tr. 76-80).[1]

At trial, petitioner denied the assault on Agent Parks and the intimidating acts against her and Agent Rawls (Tr. 312). He also testified that, when he drove past the house on the evening of the assault, he was on his way to the bank and suddenly found himself being chased by another car; he stated that while stopped at a traffic light he was approached and threatened by one of the men in the car, who sprayed him and his passenger with mace (Tr. 317).

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[1]The petition sets forth petitioner's version of the facts (Pet. 3-4) and omits the evidence tending to contradict his version. On review of a conviction, of course, the evidence must be considered in the light most favorable to the prosecution.

Following a jury trial in the United States District Court for the Western District of Pennsylvania, petitioner was convicted on all four counts charged: Count 1, forcible assault of a federal official (Agent Parks), in violation of 18 U.S.C. 111; Count 2, forcibly resisting, opposing, impeding, intimidating, and interfering with federal officials (both agents), in violation of the same statute, 18 U.S.C. 111; Count 3, endeavoring to intimidate and impede, by force or threats of force, officers of the Internal Revenue Service, in violation of 26 U.S.C. 7212(a); and Count 4, knowingly and willfully obstructing, resisting, and opposing federal officers attempting to execute a warrant for his arrest, in violation of 18 U.S.C. 1501 (Pet. 2-3).[2] The first three counts arose from events of the morning of April 22, 1976, while the fourth count arose from the chase of petitioner by IRS investigators that evening.

Petitioner was sentenced to concurrent terms of 179 days' imprisonment on the first and fourth counts to be followed by concurrent three-year terms on the second and third counts. The three-year terms for Counts 2 and 3 were suspended, and petitioner was placed on probation on those two counts.

ARGUMENT

1. Petitioner contends (Pet. 5-7) that the trial court incorrectly instructed the jury that it was immaterial as to all four counts whether petitioner knew, at the time federal agents presented themselves, that the agents were officers of the United States.

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[2]A copy of the indictment in this case has been lodged with the Clerk of this Court.

(a) Petitioner simply misreads the record as to the jury instructions concerning Counts 3 and 4, which charged violations of 18 U.S.C. 1501 and 26 U.S.C. 7212(a). The trial court expressly advised the jury that, in order to have violated 26 U.S.C. 7212(a), petitioner must have known that the agents "were Internal Revenue Agents, and that they were acting in their official capacity. * * * This statute specifically sets up an additional offense which requires proof beyond a reasonable doubt that they knew they were Internal Revenue Service servants and agents" (Sup. Tr. 20, 23).[3] A similar instruction, to the effect that petitioner must have known that the agents "were engaged in the performance of their official duties," was given concerning the elements of 18 U.S.C. 1501 (see Sup. Tr. 24, 26).

(b) As to the instruction concerning 18 U.S.C. 111, this Court has held that Section 111 does not "embod[y] an unexpressed requirement that an assailant be aware that his victim is a federal officer." The statute requires only an intent to assault. *United States* v. *Feola*, 420 U.S. 671, 684. The instruction given by the trial court correctly stated this principle (Sup. Tr. 17-18, 19).

Petitioner, however, points to language in *Feola* and in an earlier Third Circuit case[4] suggesting that in certain circumstances a person's knowledge of the identity of his victim might be relevant to establishing a violation of 18 U.S.C. 111. Specifically, if there were no indication that the person against whom force was used was a federal official, and if use of force against an ordinary citizen

[3]"Sup. Tr." refers to the supplemental transcript, setting out the charge of the trial court on June 30, 1976.

[4]*United States* v. *Goodwin*, 440 F. 2d 1152 (C.A. 3).

would be lawful in the circumstances, the requisite *mens rea* for the offense of assault might be lacking. See 420 U.S. at 686. Petitioner complains that an instruction setting forth this exception should have been given.

In the circumstances of this case, any error in failing to give such an instruction was harmless. The jury found petitioner guilty on Count 3, charging him with impeding IRS agents knowing that they are federal officials; this count related to the same incident at the Miller residence that was the subject of the assault counts. There is accordingly no possibility that the jury, under different instructions, would have found that Rawls and Parks were not IRS agents for purposes of Counts 1 and 2, relating to 18 U.S.C. 111, as well. Whether *mens rea* might have been lacking if petitioner had not known the official status of Agents Rawls and Parks is therefore an entirely hypothetical question, and irrelevant in this case.

2. Petitioner contends (Pet. 7-9) that the government's evidence concerning the events of the evening of April 22, 1976, did not prove a violation of 18 U.S.C. 1501 because petitioner merely fled and therefore did not "obstruct, resist or oppose" federal officials in their attempt to serve an arrest warrant on him. Whatever the merit of this contention—and for the reasons set out below we believe it has none—petitioner's sentence on Count 4, to which this contention applies, was concurrent with his sentence on Count 1, to which it does not apply. There is accordingly no need for this Court to review this contention. See *Barnes* v. *United States*, 412 U.S. 837, 848 n. 16.

The trial court instructed the jury that it could not find a violation of the statute if petitioner merely fled. It noted, however, that flight, together with additional circumstances

of resistance such as circumventing a roadblock, could constitute a violation of the statute (Sup. Tr. 25-26).[5]

This jury instruction was proper. While the issue has arisen infrequently, it was long ago held that obstruction of an officer includes any acts which "hinder, impede, or in any manner interrupt or prevent" the service or execution of process and "does not necessarily imply the employment of direct force." *United States* v. *McDonald*, 26 F. Cas. 1074, 1077 (No. 15,667) (C.C. E.D. Wis.); *Re: Charge to Grand Jury, McDonald*, 30 F. Cas. 983 (No. 18,250) (C.C. D. Mass.); see also *District of Columbia* v. *Little*, 339 U.S. 1, 6 and n. 6. Indeed, it has been stated that if a person, after being asked to come with an arresting officer, says he will not come and does not come, his actions constitute resistance of the officer within the prohibition of the statute. *United States* v. *Lukins*, 26 F. Cas. 1011 (No. 15,639) (C.C. D. Pa.) (Circuit Justice Washington). The government's evidence in this case showed that petitioner, after being asked by the officer to get out of his car, refused to do so and sped off; it also showed that petitioner circumvented a roadblock of a car clearly marked as a government car (Tr. 110-113). These acts constituted ample evidence from which the jury could find a violation of 18 U.S.C. 1501.

3. Finally, petitioner attacks (Pet. 9-11) his conviction for three offenses arising out of the events of the morning of April 22 at the Miller residence as violating the Double Jeopardy Clause. This claim is without merit.

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[5] *Miller* v. *United States*, 230 F. 2d 486 (C.A. 5), on which petitioner relies (Pet. 8), holds only that a person's refusal to permit officers without a search warrant to enter his residence does not violate 18 U.S.C. 1501. *United States* v. *Cunningham*, 509 F. 2d 961 (C.A. D.C.), is similarly inapposite; it construes 18 U.S.C. 111, a statute which prohibits "forcible" interference with law enforcement officers, an element not required to be proved under Section 1501.

While it has been suggested that the Double Jeopardy Clause, in addition to prohibiting multiple trials for the same offense, also protects against multiple punishment for a single offense (*North Carolina* v. *Pearce*, 395 U.S. 711, 717), it is well settled that the constitutional provision does not bar joinder at a single trial of offenses arising out of a single transaction whenever those offenses survive the "same elements" test of *Blockburger* v. *United States*, 284 U.S. 299. See *Gore* v. *United States*, 357 U.S. 386, 392-393; *Abbate* v. *United States*, 359 U.S. 187, 198-199 (Brennan, J.). And contrary to petitioner's contention (Pet. 10), whether two offenses are the same depends on the statutory elements of the offenses and not simply upon a congruence of the evidence introduced to prove the crimes in particular cases. *Iannelli* v. *United States*, 420 U.S. 770, 785 n. 17.

In the present case, Counts 1 and 2 did indeed charge the same offense—in that both entailed violations of 18 U.S.C. 111. However, although the offenses were roughly contemporaneous, they did not arise from the same transaction. Count 1 related to the physical battery of Agent Parks, while Count 2 involved the quite distinct actions by petitioner intimidating and impeding both agents through use of obscene and abusive language and threats, which constituted a show of force in the circumstances (Sup. Tr. 21-22).

While Count 3, which charged that petitioner endeavored to intimidate and impede Agents Parks and Rawls by force or threats of force, knowing them to be IRS officers, while they were acting in their official capacity, arguably was established by the same evidence as that adduced to prove Count 2, the multiple convictions entailed no error. Petitioner received concurrent sentences for these two counts, and therefore, even if they were the

"same" offense, he was subject neither to the separate trial nor the multiple punishment that the Double Jeopardy Clause might be thought to proscribe.[6]

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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[6]These two counts do not, in any event, offend the *Blockburger* test. Only Count 3 requires proof that force or threats of force were used against the agents with the knowledge that they were Internal Revenue agents in the performance of their duties under Title 26. See *United States* v. *Johnson*, 462 F. 2d 423, 428 (C.A. 3). Conversely, Count 2 requires proof of present ability to inflict harm, unlike Count 3, which is satisfied by proof of threats of force that interfere with performance of duty (*ibid.*).